YEAP TICK IN v. PACIFIC & ORIENT INSURANCE CO BHD

COURT OF APPEAL, PUTRAJAYA
BADARIAH SAHAMID JCA
HARMINDAR SINGH DHALIWAL JCA
NOR BEE ARIFFIN JCA
[CIVIL APPEAL NO: W-02(NCC)(W)-2148-10-2018]
21 JANUARY 2020

INSURANCE: *Motor insurance – Policy – Insurer obtained declaration that policy issued to insured void and unenforceable – Injured third party obtained judgment sum against insured – High Court granted permanent injunction against third party from enforcing judgment against insurer – Whether insurer obliged by statute to pay third party on judgment sum obtained – Whether declaration only effective between insurer and insured and not effective against third party – Whether third party could enforce judgment against insurer without having to first file recovery proceedings against insurer – Whether injunction ought not to be allowed – Road Transport Act 1987, s. 96(1), (3)*

CIVIL PROCEDURE: *Injunction – Permanent injunction – Appeal against – Motor insurance policy – Insurer obtained declaration that policy issued to insured void and unenforceable – Injured third party obtained judgment sum against insured – High Court granted permanent injunction against third party from enforcing judgment against insurer – Whether insurer obliged by statute to pay third party on judgment sum obtained – Whether declaration only effective between insurer and insured and not effective against third party – Whether third party could enforce judgment against insurer without having to first file recovery proceedings against insurer – Whether injunction ought not to be allowed – Road Transport Act 1987, s. 96(1), (3)*

The appellant was riding a bicycle when a motorcycle collided into him, causing the appellant to sustain serious injuries. The appellant filed a civil action against the owner of the said motorcycle ('the insured'). At the time of the accident, the said motorcycle was ridden by one Azman ('the rider'). The said motorcycle was covered by a policy insurance issued by the respondent. The respondent obtained a declaration from the High Court to the effect that the policy issued to the said insured was void and unenforceable pursuant to s. 96(3) of the Road Transport Act 1987 ('RTA 1987'). The ground relied upon was that the rider had no consent from the owner/insured to ride the said motorcycle on the day of the accident although both the rider and owner were colleagues working at the same place. Subsequent to the grant of the declaration, the appellant sought to intervene in the same proceedings to set aside the said declaration, but the application to intervene was dismissed by the High Court. Undeterred, the appellant filed another originating summons ('OS') to set aside the said

declaratory order, but the OS was struck out on grounds that it was caught by the principle of *res judicata* and issue estoppel. In the meantime, at the Sessions Court, the appellant obtained judgment against the insured for the sum of RM197,331 together with costs. The appellant then sought payment of the judgment sum from the respondent. The respondent filed the instant action against the appellant, claiming for an interlocutory injunction and damages for malicious prosecution and abuse of the court process. An interlocutory injunction was then granted to the respondent to restrain the appellant from proceeding with any enforcement proceedings against the respondent until the disposal of the suit. At the High Court, both parties consented to the action being heard by way of the procedure set out in O. 14A of the Rules of Court 2012. At the end of the trial, the High Court granted a permanent injunction against the appellant from enforcing his judgment. Aggrieved with this decision to grant the injunction, the appellant filed this appeal.

Held (allowing appeal)

Per Harmindar Singh Dhaliwal JCA delivering the judgment of the court:

(1) The starting point for any deliberation on an insurer's duty to satisfy judgments against persons insured in respect of third party risks and their right to avoid liability is to be found in s. 96 of the Road Transport Act 1987 ('RTA'), which provides a statutory exception to the rule of privity of contract. From a plain reading of the provision, it is clear that if the insured fails to pay, a statutory obligation then arises on the part of the insurer to pay on the judgment sum obtained by a third party against the insured. The respondent was thus obliged by statute to pay the appellant on the judgment sum obtained against the insured. (paras 14 & 15)

(2) Since a declaration obtained under s. 96(3) of the RTA would amount to a complete defence against any recovery proceedings by the injured third party under s. 96(1), it was therefore only fair and logical that the injured third party should not only be added as a party to the insurer's declaration proceedings but also be given every opportunity to defend his or her rights to oppose the application by an insurer without qualification. Citing privity of contract or other grounds to deprive the third party of the right to defend his or her rights was misconceived as this was a right provided by statute. The appellant was the statutorily recognised party entitled to be served with the notice under s. 96(3) of the RTA. It was not disputed that no such notice was given and the appellant was never served with the application for the declaration. In such a case, the declaration was at best only effective between the insurer and the insured and was not effective against the appellant. (paras 20 & 21)

(3) The law is clear in that the insurer must avail itself of its right and protection under s. 96(3) of the RTA to declare the policy void and unenforceable. There is nothing in the said provision which mandates that once a plaintiff has obtained judgment against the defendant, the plaintiff must then proceed by way of a recovery summons. The net effect is that once a plaintiff obtains a judgment against an insured, the insurer cannot take the position that since the insurer is not a party to that judgment, it need not pay the judgment sum as stated. On the contrary, the third party who had obtained the judgment can enforce the judgment against the insurer without having to first file a recovery proceeding against the said insurer. (paras 22 & 23)

(4) The respondent was trying to assert that the insurance was invalid and unenforceable. They went ahead and obtained a declaration to that effect, although the declaration was ineffective against the appellant. Since the respondent had recourse to s. 96(3) of the RTA but had unfortunately not followed its provisions, the respondent was now estopped from insisting that the appellant must proceed by way of recovery proceedings. The trial judge was therefore plainly wrong in allowing the injunction on the ground that recovery proceedings must be pursued by the appellant. (para 26)

Obiter:

(1) As motor insurance is compulsory by law, the intention of Parliament is to provide compensation by insurance companies especially to innocent and blameless third parties who suffer injury and damage. It is a statutory remedy and there must be some assurance of payment as otherwise the whole purpose of such an insurance scheme will seem illusory. This was fortified further by the establishment of the Motor Insurers' Bureau of Malaysia ('MIB') in 1968 as a form of social justice to victims of road accidents who failed to obtain compensation. One of the key aspects of the MIB agreement is the provision for the insurer to satisfy any judgment in respect of liability insured under compulsory insurance legislation. Further inroads on the interpretation of s. 96(3) of the Road Transport Act 1987 ('RTA') have been made with the introduction of the Financial Services Act 2013 and in particular Sch. 9 of the same. The intention of Parliament is clear. The intent is to ensure that the social objectives envisaged under Part IV of the RTA are not undermined. (paras 27 & 29)

Case(s) referred to:

Hameed Jagubar Syed Ahmad v. Pacific & Orient Insurance Co Bhd [2017] 10 CLJ 278 CA ***(refd)***

Letchumanan Gopal v. Pacific Orient & Co Sdn Bhd [2011] 5 CLJ 866 CA ***(refd)***

Merchants And Manufacturers Insurance Co Ltd v. Hunt [1941] 1 All ER 123 ***(refd)***

Pacific & Orient Insurance Co Bhd v. Kamacheh Karuppen [2015] 4 CLJ 54 CA ***(refd)***

Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy [2011] 1 CLJ 947 CA ***(refd)***

Pacific & Orient Insurance Co Bhd v. Rasip Hamsudi & Ors [2017] 4 CLJ 572 CA ***(refd)***

Tokio Marine Insurans (Malaysia) Bhd v. Mohd Radzi Zainuddin & Anor [2012] 10 CLJ 840 HC ***(refd)***

Legislation referred to:

Financial Services Act 2013, Schedule 9

Road Transport Act 1987, s. 96(1), (2), (3)

Rules of Court 2012, O. 14A

Road Traffic Act 1934 [UK], s. 10(3)

Other source(s) referred to:

Manoharan Veerasamy, *Pacific & Orient Insurance Co Bhd v. Hameed Jagubar – Did the Federal Court finally answer all the questions on backdated insurance cover notes?,* [2019] 1 LNS (A) lx

S Santhana Dass, *Backdated Cover Notes and the Insurers' Liability under Section 96 of the Road Transport Act 1987"* [2017] 1 LNS (A) xi

For the appellant - C Kandiah & G Naidu; M/s Manikam Avadiar & Co

For the respondent - R Kamalanathan & Vinod Kamalanathan; M/s Vinod Kamalanathan & Assocs

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: WA-22NCC-84-03-2018 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Harmindar Singh Dhaliwal JCA:

[1] This appeal emanates from the decision of the Kuala Lumpur High Court given on 9 October 2018. At the end of the trial, where by agreement only affidavit evidence was adduced, the High Court dismissed the plaintiff's action but had granted a permanent injunction against the defendant from enforcing his judgment dated 28 March 2016 on the plaintiff. The plaintiff was also awarded costs of RM5,000.

[2] Aggrieved with this decision to grant the injunction, the defendant filed this appeal. At the hearing of the appeal on 11 September 2019, and after having read the written submissions as well as hearing oral arguments on the issues raised, we unanimously allowed the appeal and set aside the orders of the High Court. Our reasons for so doing now follow and will form the judgment of the court.

The Factual Background

[3] The whole saga leading to the filing of the present action began with a motor-vehicle road accident that occurred on 13 June 2012. The appellant here was riding a bicycle on that fateful day when he was collided into by a motorcycle with registration No. BKU 1790. The appellant sustained serious injuries. He filed a civil action at the Shah Alam Sessions Court *vide* Civil Action No. A53KJ-96-08-2013. The claim was filed against the owner of the said motorcycle one Muhammad Soleh bin Abdullah ("the insured"). At the time of the accident, the said motorcycle was ridden by one Azman bin Kamarudin ("the rider"). The said motorcycle was covered by a policy of insurance issued by the respondent. The respondent appointed solicitors to oppose the claim.

[4] On 7 January 2015, the respondent obtained a declaration from the Kuala Lumpur High Court to the effect that the policy issued to the said insured was void and unenforceable pursuant to s. 96(3) of the Road Transport Act 1987 ("RTA 1987"). The ground relied upon was that the rider had no consent from the owner/insured to ride the said motorcycle on the day of the accident although both the rider and owner were colleagues working at the same place.

[5] Subsequent to the grant of the declaration, the appellant sought to intervene in the same proceedings to set aside the said declaration. The application to intervene was dismissed by the High Court. No appeal was filed by the appellant. Seemingly undeterred, the appellant filed another originating summons ("OS") to set aside the said declaratory order of 7 January 2015. Upon an application by the respondent, the OS was struck out on grounds that it was caught by the principle of *res judicata* and issue estoppel. An appeal filed to this court was later withdrawn.

[6] In the meantime, at the same Sessions Court, the solicitors appointed by the respondent were instructed to discharge themselves on the ground that the respondent had obtained the said declaration. The trial then proceeded with the appellant obtaining judgment against the defendant/insured for the sum of RM197,331 together with costs of RM14,633. The solicitors for the appellant then sought payment of the judgment sum from the respondent failing which, they said, enforcement proceedings would follow.

[7] On 10 March 2018, the respondent filed the instant action against the appellant. The claim was for an interlocutory injunction and damages for malicious prosecution and abuse of the court process. An interlocutory injunction was then granted to the respondent to restrain the appellant from proceeding with any enforcement proceedings against the respondent until the disposal of the suit.

A **Decision Of The High Court**

[8] At the High Court below, both parties consented to the action being heard by way of the procedure set out in O. 14A of the Rules of Court 2012. After taking into account both the written and oral submissions, the High Court made the following orders as summarised in para. [10] of the grounds of decision of the learned judge:

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(a) prayer for permanent injunction was allowed;

(b) damages for malicious prosecution was dismissed;

(c) damages for abuse of process of court was dismissed; and

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(d) costs of RM5,000 to the plaintiff.

Our Decision

[9] There was no dispute that the respondent here had initiated two causes of action against the appellant, that is, the torts of malicious prosecution and abuse of the court process. It was also plain that after due consideration, both causes of action were dismissed by the learned judge. Now, there were no appeals by either side on these findings. The parties are then taken to be bound by these findings and it was not open for this court to revisit these findings.

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[10] Having so dismissed the claims of the respondent, it is our respectful view that the learned judge had no jurisdiction to grant any relief to the respondent. In other words, before any relief is granted, whether in the form of damages or other relief, the causes of action must be firmly established. Curiously enough, the learned judge thought it fit to grant what appeared to be a permanent injunction against the appellant from proceeding with any enforcement proceedings against the respondent. We will come to the reasons why the learned judge did so in a moment.

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[11] We also noted another infirmity with the learned judge's decision. In the statement of claim, there was indeed no prayer for a perpetual or permanent injunction. What was sought was only an interim or interlocutory injunction pending the disposal of the present civil suit. That this was the case was not surprising as uppermost in the mind of the respondent was to restrain the enforcement of the judgment which the appellant had obtained in the Sessions Court. Again, we were constrained to observe, with respect, that the learned judge had fallen into error. Based on these reasons alone, we considered that the appeal should be allowed and the order of the High Court be set aside.

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[12] Be that as it may, and for the sake of completeness, we will go on to consider the reasons why the learned judge made the order for the permanent injunction. The reasons for doing so appear in para. [14] of the grounds of decision as follows:

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[14] However since the Defendant through his solicitors, Messrs. Manikam Avadiar & Co. issued a notice dated 26 February 2018 claiming the judgment sum and threatened to enforce the said Judgment 30 through proceedings "deem fit and proper and in a manner or method, and date, at our discretion, without further notice to you" and bearing in mind that that the Plaintiff is a public listed company, the Court granted the permanent injunction to restrain the Defendant from executing the Judgment sum without first obtaining judgment against the Plaintiff. Otherwise execution be it by way of winding up or by way of writ of seizure and sale would cause irreparable damage to the Plaintiff being an insurance company doing public service and cause great inconvenience to the public and to successful 3rd party claimants whose damages cannot be paid. Furthermore once a petition is presented, the Plaintiff must make a public announcement and there will be a drop in the share value of the Plaintiff.

[13] It would appear that the principal reason, or rather the only proffered reason, for granting the injunction was due to the learned judge's view that the appellant could not enforce the judgment sum without first obtaining a judgment against the respondent. Unfortunately, no reasons were provided as to how the learned judge had come to this conclusion. So, was the learned judge right? Both parties had put in persuasive arguments to either support or assail the learned judge's finding in this respect.

[14] The starting point for any deliberation on an insurer's duty to satisfy judgments against persons insured in respect of third party risks and their right to avoid liability is to be found in s. 96 of the RTA 1987 which provides:

96(1) If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms to the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1):

(a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the proceedings;

(b) in respect of any judgment, so long as execution is stayed pending an appeal; or

A (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained therein and either:

(i) before the happening of the said event the certificate was
B surrendered to the insurer or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed;

(ii) after the happening of the said event, but expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the
C person to whom the certificate was delivered made such a statutory declaration as aforesaid; or

(iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part in respect of the failure to surrender
D the certificate.

(3) No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable:

E Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice to the person who is the plaintiff in the said proceedings specifying the grounds on which he
F proposes to rely and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto.

(Subsections (4), (5) and (6) have been omitted as being irrelevant to the present proceedings)

[15] This provision provides a statutory exception to the rule of privity of
G contract. From a plain reading of the provision above, it is clear that if the insured fails to pay, a statutory obligation then arises on the part of the insurer to pay on the judgment sum obtained by a third party against the insured. So, in the instant case, the respondent was obliged by statute to pay the appellant on the judgment sum obtained against the insured.

H **[16]** The mandatory obligation of the insurer can only be avoided if there exists the circumstances and conditions as set out in sub-ss. (2) and (3) of s. 96 of the RTA 1987. The circumstances for avoidance are where the requisite notice of the proceedings was not given prior to the commencement of proceedings; where there is a stay of execution of the judgment pending

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appeal; where the policy of insurance had been cancelled; and where the insurer had obtained a declaration from the court that the insurance was void or unenforceable (see *Pacific & Orient Insurance Co Bhd v. Kamacheh Karuppen* [2015] 4 CLJ 54).

[17] In the instant case, the respondent had obtained the declaration pursuant to s. 96(3) of the RTA 1987. In our view, such a declaration obtained under s. 96(3) would amount to a complete defence against any recovery proceedings by the injured third party under s. 96(1) of the same Act unless the declaration was limited to the rights between the insurer and the insured. So, in the instant case, there ought to have been no issue as to whether recovery proceedings were required contrary to what was observed by the learned judge below.

[18] In our view, the real question to be determined at the outset was whether the declaration obtained by the respondent was effective against the appellant. Or whether it was valid only between the insurer and the insured. In this context, we must observe that s. 96(3) of the RTA quite clearly provides a right for the injured third party to intervene in any such proceeding and defend his or her rights. So it cannot be simply a matter between the insurer and the insured as implied by learned counsel for the respondent.

[19] The rationale for s. 96 RTA (which is in *pari materia* with the English provision under s. 10(3) Road Traffic Act 1934 and probably inspired by it) was perhaps best explained by the English Court of Appeal in *Merchants And Manufacturers Insurance Co Ltd v. Hunt* [1941] 1 All ER 123 wherein Scott LJ stated (at p. 125):

> Before I consider the facts of the case, or the relevant terms of the policy, it will be convenient to quote the essential provisions of the Road Traffic Act 1934, upon which the whole appeal turns. Sect. 10(1) provides as follows:
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> > ... if a judgment for damages for personal injuries or death is obtained against a person insured by such a policy as is required by sect. 36 of the 1930 Act, then, notwithstanding that the insurer may be entitled to avoid the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment the damages, interest and costs awarded.
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> This proviso thus gives to plaintiffs who obtain judgment in an action for damages caused by the negligent driving or management of a motor car a direct right of action against the insurance company who issued the policy required by the 1930 Act, although the plaintiffs in the negligence action are not party to the policy, and although the policy is voidable at the insurer's instance. From the extreme hardship which might otherwise result from subsect. (1), subsect. (3) gives the insurer a conditional means

A of escape. If he discovers that he was induced to make the contract of insurance by some material non-disclosure or misrepresentation which, by ordinary insurance law, and not merely by reason of some special stipulation which he has put in his form of policy, entitles him to avoid the contract, he may obtain a declaration to that effect from the court, and he will then be free from the statutory liability to the injured third B party. This legislation was obviously intended to effect, *inter alia*, a fair compromise between the two desirable but conflicting objects – namely, on the one hand that of protecting the public from the danger of impecunious tortfeasors on the roads, and on the other hand, that of avoiding the injustice of putting on a wholly innocent and misled insurer the whole pecuniary burden of a policy which, neither in law nor in equity, C is his policy. However, it would have been unfair to confer this relief unconditionally. There was an obvious danger of the injured party being deprived of the pecuniary safeguard which was the subject of subsect. (1) through the possibility of the policy being avoided in proceedings under the first part of subsect. (3) without his knowledge, and even by collusion between the insurer and the insured. It was essential that he should have D notice of any such action by the insurer, and also that he should be given the right to appear in it and there defend his rights. Both the requisites are met by the proviso to subsect. (3), which in effect creates two conditions precedent to the existence of the insurer's right to get his declaration under the first part of subsect. (3). The third party gets full E notice of the ground of the insurer's claim, and is given an unqualified right to become a party in the insurer's action, and it is particularly to be noted that he is given all the rights of a party to an action without any qualification upon them.

[20] Since a declaration obtained under s. 96(3) would amount to a F complete defence against any recovery proceedings by the injured third party under s. 96(1), it is therefore only fair and logical that the injured third party should not only be added as a party to the insurer's declaration proceedings but also be given every opportunity to defend his or her rights to oppose the application by an insurer without qualification. Citing privity of contract or other grounds to deprive the third party of the right to defend his or her rights G is, with respect, misconceived as this is a right provided by statute.

[21] In the present case, it was therefore plain that the appellant was the statutorily recognised party entitled to be served with the notice under s. 96(3) of the RTA 1987. It was not disputed that no such notice was given and the appellant was never served with the application for the declaration. H In such a case, we were of the view that the declaration was at best only effective between the insurer and the insured and was not effective against the appellant for all the aforementioned reasons.

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[22] We now come to the question, as we must, on whether the appellant was required to file recovery proceedings against the respondent on the judgment that was obtained. The respondent argued that there was no automatic right to judgment against the insurer. In this respect, the law is clear in that the insurer must avail itself of its right and protection under s. 96(3) of the RTA 1987 to declare the policy void and unenforceable. There is nothing in the said provision which mandates or even suggests that once a plaintiff has obtained judgment against the defendant, the plaintiff must then proceed by way of a recovery summons (see *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* [2011] 1 CLJ 947; *Pacific & Orient Insurance Co Bhd v. Rasip Hamsudi & Ors* [2017] 4 CLJ 572).

[23] The net effect is that once a plaintiff obtains a judgment against an insured, the insurer cannot take the position that since the insurer is not a party to that judgment, it need not pay the judgment sum as stated. On the contrary, the third party who had obtained the judgment can enforce the judgment against the insurer without having to first file a recovery proceeding against the said insurer.

[24] The only instance, in our view, where recovery proceedings are necessary is when the insurer is not seeking or unable to declare the insurance void and unenforceable. For example, where a fake policy had been issued in the name of the insurer, it would be pointless to declare such a policy void and unenforceable as no such policy ever existed. In this context, it can hardly be doubted that s. 96(3) of the RTA 1987 presupposes the existence of a valid policy of insurance as set out in s. 96(1) of the same (see *Tokio Marine Insurans (Malaysia) Bhd v. Mohd Radzi Zainuddin & Anor* [2012] 10 CLJ 840; [2012] 8 MLJ 814).

[25] Similarly in the case of *Letchumanan Gopal v. Pacific Orient & Co Sdn Bhd* [2011] 5 CLJ 866; [2011] 6 MLJ 788 which case was heavily relied upon by the respondent. The insurer there was not contending that the policy was invalid or unenforceable. The insurer relied on an exception of the liability clause in its insurance policy that stated that the insurer would not be liable for the death of or bodily injury to any person "other than a passenger carried by reason of or in pursuance of a contract of employment". In such a case, the insurer can resist the recovery suit by stating in its defence that the terms of the policy did not cover the passenger.

[26] In the instant case, however, the respondent was trying to assert that the insurance was invalid and unenforceable. They went ahead and obtained a declaration to that effect although, for the reasons we have provided, the declaration was ineffective against the appellant. Since the respondent had recourse to s. 96(3) of the RTA 1987 but had unfortunately not followed its provisions, the respondent was now estopped from insisting that the appellant must proceed by way of recovery proceedings. The learned judge was therefore plainly wrong in allowing the injunction on the ground that recovery proceedings must be pursued by the appellant.

[27] In the broader context, we were compelled to observe that the appellant was an innocent third party. As motor insurance is compulsory by law, the intention of Parliament is to provide compensation by insurance companies especially to innocent and blameless third parties who suffer injury and damage. It is a statutory remedy and there must be some assurance of payment as otherwise the whole purpose of such an insurance scheme will seem illusory (see *Hameed Jagubar Syed Ahmad v. Pacific & Orient Insurance Co Bhd* [2017] 10 CLJ 278).

[28] This was fortified further by the establishment of the Motor Insurers' Bureau of Malaysia ('MIB') in 1968 as a form of social justice to victims of road accidents who failed to obtain compensation. One of the key aspects of the MIB Agreement is the provision for the insurer to satisfy any judgment in respect of liability insured under compulsory insurance legislation (see S. Santhana Dass, *The Law of Motor Insurance*, (2010), Marsden Law Book, Kuala Lumpur; S. Santhana Dass, "*Backdated Cover Notes and the Insurers' Liability under Section 96 of the Road Transport Act 1987*" [2017] 1 LNS (A) xi and Manoharan Veerasamy, "*Pacific & Orient Insurance Co Bhd v. Hameed Jagubar – Did the Federal Court finally answer all the questions on backdated insurance cover notes?*" [2019] 1 LNS (A) lx).

[29] As this issue was not raised in the courts below and not canvassed before us we shall say no more. We should, however, add that further inroads on the interpretation of s. 96(3) of the RTA 1987 have been made with the introduction of the Financial Services Act 2013 and in particular Schedule 9 of the same. The intention of Parliament is clear. The intent is to ensure that the social objectives envisaged under Part IV of the RTA 1987 are not undermined.

Conclusion

[30] In the circumstances, and for the reasons aforementioned, we were constrained to hold that the learned judge was plainly wrong in granting the order of the permanent injunction against the appellant. Accordingly, we allowed the appeal and set aside that particular order of the High Court including the order of costs. We awarded costs of RM40,000 here and below to the appellant subject to payment of allocatur.